

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAWRENCE ELLIOT,

Petitioner,

-v.-

MICHAEL KIRKPATRICK,

Respondent.

17 Civ. 7529 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Respondent's September 20, 2021 letter and enclosures regarding the findings of its investigation into the issues raised by Petitioner's August 27, 2021 submission. (Dkt. #65). Based on the Court's review of Respondent's letter and enclosures, it appears that Petitioner received the Court's November 13, 2020 Opinion and Order (Dkt. #54), as well as the Court's subsequent Orders (Dkt. #59, 62, 64). Moreover, there is no indication that any delays in the Court's receipt of Petitioner's outgoing mail can be attributed to his facility — rather, it appears that Petitioner's April 14, 2021 letter was initially forwarded to the Second Circuit, and that Petitioner subsequently twice resubmitted the letter to the Second Circuit, only to send the letter to this Court for its consideration some months later. (*See* Dkt. #65). On this record, the Court does not find that any delays in its receipt of Petitioner's April 14, 2021 letter and its enclosures provide a basis for granting the untimely relief sought in Plaintiff's application.

Moreover, even were it not untimely, Plaintiff's application is without merit. Petitioner seeks a stay of the deadline for any challenge to the Court's

November 13, 2020 Order pending the outcome of state-court proceedings brought under New York Criminal Procedure Law § 440.10. (See Dkt. #63). Prior to the Court's adjudication of his petition, Plaintiff sought a stay of these proceedings on this same basis (see Dkt. #16, 21), and in an order issued on March 30, 2018, Magistrate Judge Fox denied his application, finding that Plaintiff was barred from bringing new claims under the statute of limitations, and that the claims underlying his § 440.10 application did not relate back to the initial petition (Dkt. #23). Plaintiff has provided the Court with no grounds for reconsideration of Judge Fox's decision. While courts may grant a stay of habeas proceedings in "limited circumstances," *Rhines v. Weber*, 544 U.S. 269, 277 (2005), those circumstances are not present in this case. See, e.g., *Martinez v. Mariuscello*, No. 16 Civ. 7933 (RJS), 2017 WL 2735576, at *2-3 (S.D.N.Y. June 23, 2017) (denying motion to stay habeas proceedings where "almost all of the claims [Petitioner] hopes to add to his habeas petition are plainly lacking in merit because they are time barred and do not relate back to the claims asserted in Petitioner's present petition"). The Court considers this matter closed.

The Clerk of Court is directed to mail a copy of this Order to Petitioner at his address of record.

SO ORDERED.

Dated: September 21, 2021
New York, New York



KATHERINE POLK FAILLA
United States District Judge